IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

SECOND APPEAL NO. 1361 OF 2004

Smt. Kusum Krishna Sable & Ors. ... Appellants.

V/s.

Shri Gajanan Kavaji Sabale. ... Respondent.

Mr. G.S. Godbole for the Appellants.
Mr. A.B. Kadam i/b. A.S. Shitole for the Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

11TH JULY 2007.

P.C. :-

. With the consent of the learned Counsel the Second Appeal is taken up for hearing.

2. The original Plaintiff instituted a Suit, R.C.S. 41 of 1993, for a declaration of title and for possession of the suit property situated at Village Rajewadi, Taluka Ambegaon, District - Pune. The Defendant entered appearance and filed a written statement contending that the house was owned by the joint family. The suit was decreed by the Civil Judge, Junior Division, Ghodegaon on 4th May 1990. The original Defendant filed an Appeal. The Appellate Court allowed the Appeal and consequently dismissed the suit instituted by the Appellant.

3. The Judgment of the learned Trial Judge noted that though the Defendant contested the suit by filing a written statement, he had remained absent at the hearing of the suit and did not come forward to contest the claim of the Appellant - Plaintiff. The Plaintiff was accordingly directed to lead his evidence. The evidence of the Plaintiff went unchallenged and the suit was decreed. The Appellate Court held that the learned Trial Judge was not justified in delivering judgment on the same day on which the Plaintiff was called upon to lead his evidence on affidavit and that the suit ought to have been adjourned so as to provide an opportunity to the Defendant to lead his evidence. The Appellate Court noted that the record did not show that the hearing was adjourned at any time at the instance of the Defendant. There was thus held to be a breach of the principles of natural justice. Having held so, the Appellate Court entered upon the merits of the claim of the Appellant - Plaintiff, proceeded to allow the Appeal; dismissed the suit and held that there was nothing to show that the Plaintiff had obtained a lease deed of the land under the house from the Chief Executive Officer.

4. On behalf of the Appellant it has been submitted that the Appellate Court having found that there was a breach on the part of the Trial Court in following the required procedure, the suit ought to have been placed for hearing before the Trial Court on a remand of the proceedings. The Second Appeal is admitted. The following substantial question of law is framed :-

(i) Whether the Appellate Court having found that the learned Trial Judge was not justified in delivering judgment on the same day on which the suit was fixed for recording the evidence of the Plaintiff, thereby depriving the Defendant of an opportunity to lead evidence, was it not appropriate and proper that the proceedings be remanded back to the Trial Court for re-trial ?

5. There is in my view, merit in the submission urged on behalf of the Appellant. The Appellate Court ought to have remanded the proceedings back to the Trial Court having come to the conclusion that the Trial Court had erroneously failed to furnish the original Defendant an opportunity to lead evidence. It

would have been appropriate and proper for the Appellate Court to set down the suit for hearing before the learned Trial Judge so as to furnish the parties an opportunity to complete the trial and to lead evidence in the suit.

6. For all these reasons, the Second Appeal is allowed in part. The order of the learned Additional District Judge, Pune dated 29th June 2000 is quashed and set aside, in so far as the Appellate Court dismissed the suit instituted by the original Plaintiff viz. Regular Civil Suit 41 of 1993. The suit is restored to the file of the Civil Judge, Junior Division, Ghodegaon who shall dispose of the suit after furnishing an opportunity to the parties of contesting the proceedings on merits.

7. The Second Appeal shall accordingly stand disposed of. There shall be no order as to costs.